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November 8, 2017

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Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

**Re: Wireline Infrastructure, WC Docket No. 17-84
Part 32 Accounting, WC Docket No. 14-130**

On November 6, 2017, Steve Morris and Jennifer McKee of NCTA – The Internet & Television Association (NCTA) and Paul Glist of Davis Wright Tremaine (DWT), on behalf of NCTA, met with Claude Aiken, Legal Advisor to Commissioner Clyburn, and Jamie Susskind, Chief of Staff and Legal Advisor to Commissioner Carr, to discuss the above-referenced proceedings.¹ On November 7 and 8, 2017, Mr. Morris, Ms. McKee, and Daniel Reing of DWT, met with Jay Schwarz, Wireline Advisor to Chairman Pai, Amy Bender, Legal Advisor to Commissioner O’Rielly, and Travis Litman, Chief of Staff and Senior Legal Advisor to Commissioner Rosenworcel, to discuss the same proceedings. In each of these meetings, NCTA discussed the following issues:

Overlashing. NCTA explained that one of the most important elements of the Commission’s current regulatory regime is the policy that encourages overlashing of facilities to efficiently upgrade plant, serve customers, and repair damaged facilities.² In a series of decisions over the last two decades, the Commission has determined that attaching parties do not need prior approval of the pole owner to overlash fiber or coaxial cable to existing facilities that

¹ *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Notice of Proposed Rulemaking, Notice of Inquiry, and Request for Comment, 32 FCC Rcd 3266 (2017) (*Notice*); *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking, FCC-CIRC1711-04 (rel. Oct. 26, 2017) (*Draft Order*).

² *Implementation of Section 703(e) of the Telecommunications Act of 1996, Amendment of the Commission’s Rules and Policies Governing Pole Attachments*, Report and Order, 13 FCC Rcd 6777, 6807 ¶ 62 (1998) (“[O]verlashing is important to implementing the 1996 [Telecommunications] Act as it facilitates and expedites installing infrastructure essential to providing cable and telecommunications services to American communities. Overlashing promotes competition [and helps] provide diversity of services over existing facilities, fostering the availability of telecommunications services to communities, and increasing opportunities for competition in the marketplace.”).

already have been approved by the pole owner.³ The Commission's overlash policy has served as a foundation for billions of dollars in facilities deployment by cable operators, with no adverse impact on the safety or reliability of the underlying networks. Whether in a declaratory statement or in a proposal to codify the current policy, NCTA strongly encouraged the Commission to make an explicit finding that the current policy has been successful in promoting safe and efficient network deployment and reaffirm that pole owners may not require prior approval for overlash to facilities that already have been approved.⁴

One Touch Make Ready. NCTA explained that its members continue to deploy broadband facilities to residential and business customers and we expressed support for additional changes to the Commission's rules that would enable more timely and efficient pole attachments. NCTA encouraged the Commission's efforts to develop an approach that "balances the legitimate needs and interests of new attachers, existing attachers, utilities, and the public"⁵ and explained that some proposals for "one touch make ready" (OTMR) do not strike the necessary balance. NCTA identified three particular concerns with the OTMR proposals in the record – (1) the absence of any meaningful opportunity for an existing attacher to perform its own make-ready in a timely manner; (2) the failure to provide an existing attacher any role in the selection of contractors that will move its facilities; and (3) the failure to provide indemnification to an existing attacher in the event its facilities are damaged or services disrupted. We noted that the Commission itself acknowledged similar concerns when it adopted rules in 2011 permitting new entrants to move facilities already on the pole under certain circumstances.⁶ We encouraged the Commission to find a middle ground that reduces the delays that result from sequential make-ready under the current regime while still addressing these three significant concerns.

Pole Attachment Transparency. NCTA encouraged the Commission to promote transparency around pole attachment rates, terms and conditions by granting NCTA's petition for reconsideration of the *Part 32 Order*.⁷ If that order is allowed to take effect without change, the Commission will be inundated with complaints because filing a complaint will be the only possible way for an attacher to obtain the data necessary to verify that a rate is reasonable and

³ See *Amendment of Commission's Rules and Policies Governing Pole Attachments*, CS Docket Nos. 97-98 and 97-151, Consolidated Partial Order on Reconsideration, 16 FCC Rcd 12103, 12141 ¶ 75 (2001) ("We affirm our policy that neither the host attaching entity nor the third party overlasher must obtain additional approval from or consent of the utility for overlash other than the approval obtained for the host attachment"), *aff'd Southern Company v. FCC*, 313 F.3d 574, 582 (D.C. Cir. 2002) ("Overlashers are not required to give prior notice to utilities before overlashing.").

⁴ In addition, given the Commission's clear precedent that prior approval is not required, the statement in footnote 483 of the *Draft Order* suggesting that a utility can "deny an overlash request" for safety or reliability reasons is not an accurate statement of current policy and should be deleted from the item or modified to more accurately reflect that policy.

⁵ Notice, ¶ 6.

⁶ *Implementation of Section 224 of the Act*, WC Docket No. 07-245, Report and Order and Order on Reconsideration, 26 FCC Rcd 5240, 5265, 5266-5269, ¶¶ 49, 52-58 (2011).

⁷ *Comprehensive Review of the Part 32 Uniform System of Accounts*, WC Docket No. 14-130, Petition for Reconsideration of NCTA – The Internet & Television Association (filed June 5, 2017).

cost-based. Before incumbent LECs change their accounting systems pursuant to the *Part 32 Order*, the Commission should take steps to ensure that all attachers have public access to pole cost data, including any underlying assumptions and allocations, that will enable them to confirm that rates are reasonable without involving the Commission. The Commission also should address concerns that incumbent LECs could use the transition to GAAP accounting to significantly increase pole attachment rates and that the transition mechanism that was adopted to prevent such unwarranted increases easily can be gamed by incumbent LECs.⁸

Excessive Municipal Fees. NCTA also encouraged the Commission to address concerns about the recent practice of local governments imposing fees on the provision of broadband and telecommunications services offered by cable operators. The offering of broadband and telecommunications services over a cable network places no additional burden on the public right-of-way and should not be used as an excuse by local governments to impose additional fees beyond the cable franchise fee. Although the Commission has explained its opposition to municipal fees on broadband services on multiple occasions,⁹ cable operators have experienced problems with such fees in the state of Oregon and are concerned that other states will follow unless the Commission takes action.¹⁰ We encouraged the Commission to issue a declaratory ruling that a franchise issued for the construction of a cable system under Title VI authorizes the cable operator to provide all broadband and other services and to install equipment and facilities to provide such services over its cable system, and that no fee may be assessed for such additional services, equipment, or facilities beyond the franchise fee on cable services authorized by the Communications Act.¹¹

Respectfully submitted,

/s/ **Steven F. Morris**

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⁸ *Id.* at 15-20; *Comprehensive Review of the Part 32 Uniform System of Accounts*, WC Docket No. 14-130, Reply of NCTA – The Internet & Television Association to Oppositions (filed July 31, 2017) at 4-5.

⁹ *See Protecting and Promoting the Open Internet*, Report and Order on Remand, Declaratory Ruling, and Order, 30 FCC Rcd 5601, 5804, ¶ 433 n.1285 (2015); *Appropriate Regulatory Treatment for Broadband Access to the Internet Over Cable Facilities*, 17 FCC Rcd 4798, 4849-50, ¶ 102 (2002).

¹⁰ *See City of Eugene v. Comcast of Or.* II, 359 Or. 528 (2015) (rejecting challenge to municipal license fee of seven percent on broadband and telecommunications revenues).

¹¹ *See, e.g.*, NCTA Comments at 24.